

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Randolph A. Jackson, Jr.,

Petitioner,

v.

David Shinn, *et al.*,

Respondents.

No. CV-22-08216-PCT-JJT (ESW)

ORDER

At issue is the Report and Recommendation (Doc. 33, “R&R”) submitted by United States Magistrate Judge Eileen S. Willett, addressing Randolph Jackson’s Amended Petition Under 28 U.S.C. § 2254 for a for Writ of Habeas Corpus (Doc. 14). Petitioner has challenged his convictions in Arizona state court for transportation of narcotic drugs for sale, possession or use of drug paraphernalia and resisting arrest. In the R&R, Judge Willett analyzed Petitioner Jackson’s seven stated grounds for relief and concluded that Ground 7 does not present a cognizable federal claim and must be dismissed; Grounds 4 and 5 are procedurally defaulted without excuse or cause and so must be dismissed as well; and Grounds 1, 2, 3 and 6 fail on their merits and should be denied on that basis. Petitioner has filed Objections to the R&R (Doc. 43) and Respondents have filed a Reply thereto (Doc. 44).

Also at issue are two Motions to Stay proceedings (Docs. 25, 42) that Petitioner has filed, as well as another R&R (Doc. 29) entered by Judge Willett addressing the first of those Motions, to which Petitioner filed no objection. Finally, the Court will address two

1 Motions to Strike (Docs. 39, 48) filed by Respondents and seeking to strike two filings by
2 Petitioner, both entitled “Judicial Notice Under Federal Rules of Evidence Article Rule
3 201 (Docs. 35, 47).

4 In the R&R, Judge Willett correctly concluded that Grounds 4 and 5 are
5 procedurally defaulted. Petitioner never exhausted those claims—for ineffective assistance
6 of trial, advisory and appellate counsel—by fairly presenting them to the Arizona state
7 courts. In his Objections, Petitioner states that he did present at least Ground 5, but points
8 to no actual information in the record to challenge Respondent’s supported assertions to
9 the contrary; rather, he simply repeats his own conclusory assertions. As Respondents point
10 out in their Reply, this is insufficient for the Court to sustain an objection, both as to
11 Grounds 4 and 5, and as set forth below, the other grounds as well. Petitioner’s lengthy
12 Objections are long on repetition of conclusory assertions but lack either support or
13 specifics. And Petitioner fails to satisfy the standard for excusal of procedural default as
14 set forth in *Smith v. Baldwin*, 510 F.3d 1127, 1146 (9th Cir. 2007).

15 Judge Willett also correctly noted Ground 7—a claim of unlawful sentence under
16 Arizona criminal law—is not a cognizable claim for habeas relief. Ground 7 merely
17 challenges the application of Arizona state sentencing law. It does not implicate or
18 articulate any violation of federal law, constitutional or otherwise.

19 And Judge Willett’s conclusion that Grounds 1, 2, 3 and 6 fail on their merits is
20 correct. None of the decisions underlying those grounds were contrary to or involved an
21 unreasonable application of clearly established federal law; nor were those four decisions
22 based on an unreasonable determination of facts in light of the evidence presented in the
23 state *fora*. As to Grounds 1 through 3, Judge Willett noted the Arizona Court of Appeals
24 ruling, which she quoted in pages 6 and 7 of the R&R, supported her conclusion that under
25 the circumstances presented in this case, the trial court’s decisions to 1) deny rescission of
26 Petitioner’s waiver of counsel mid-trial; 2) deny a continuance mid-trial to allow him to
27 seek new counsel; and 3) not appoint new counsel at that point, were not unreasonable
28 applications of federal law. The Court of Appeals opinion cited to the record to make clear

1 that the trial court had been very patient with Petitioner as he obtained several continuances
2 of trial, sought and obtained multiple changes of counsel, fully advising Petitioner on the
3 risks and consequences of representing himself, and warned Petitioner the court would not
4 brook further delay or gamesmanship. This Court shares the conclusion of the Arizona
5 Court of Appeals that on the record before it, the trial court did not abuse its discretion in
6 denying Petitioner's requests for continuance or for appointment of new counsel mid-trial,
7 after the state had rested, and after the warnings Petitioner had received.

8 Similarly, Judge Willett correctly concluded that Ground 6—the asserted *Brady*
9 violation arising from Deputy Evers's conflicting statements about why no dash-cam
10 recordings of critical moments of his encounter with Petitioner were made—also fails on
11 its merits. As the Court of Appeals found, nothing in the record indicates undisclosed
12 exculpatory evidence was withheld from the jury, and evidence of Deputy Evers's
13 inconsistent statements about why there was no recording, as well the results of the
14 investigation into his conduct and his resignation as the negative findings were coming out,
15 all were disclosed and the jury was aware of his potential reliability issues. The Arizona
16 court's decisions on this issue are neither contrary to nor an unreasonable application of
17 federal law in the form of the *Brady* rule.

18 Judge Willett also correctly concluded that Petitioner is not entitled to an evidentiary
19 hearing. 28 U.S.C. § 2254(e)(2) provides that where a petitioner has failed to develop a
20 factual basis of a claim in state court proceedings, this Court cannot hold an evidentiary
21 hearing unless such claim rests upon a new and retroactive change to federal constitutional
22 law, or “a factual predicate that could not have been previously discovered through the
23 exercise of due diligence.” Petitioner does not argue any change in constitutional law
24 underlies his potential claim. Rather he asserts new evidence, as noted in his filings of
25 judicial notice. But none of it meets the definition of new evidence, as discussed briefly
26 below, and Judge Willett's conclusion that the record is adequately developed already is in
27 any event correct.

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1 The Court also will deny as moot Petitioner’s first Motion to Stay (Doc. 25).
2 Petitioner sought the stay to allow the Arizona Court of Appeals to review the trial court’s
3 denial of his fifth petition for state PCR review. On December 12, 2023, that court granted
4 review but denied relief. The stay request is therefore moot.

5 While all of the above were pending, Petitioner filed another Motion for Stay
6 (Doc. 42), to which Respondents filed a Response in opposition (Doc. 45). The Court will
7 deny this motion as well. Petitioner asserts in his motion that he has discovered “new
8 evidence” discussed above, which justifies staying this matter or continuing it for a year.
9 In their Response, Respondents list several reasons why the motion is unsupported in
10 habeas law, to include that the evidence is not new and was available well before trial in
11 the state matter and that *Rhines v. Weber*, 544 U.S. 269 (2005), does not authorize a stay,
12 The Court agrees. Moreover, were the Court to reach the merits, the purported ground upon
13 which Petitioner seeks the stay is futile. The “evidence” upon which Petitioner would
14 ground his claim is the absence of an affidavit that the car he was apprehended in by law
15 enforcement was stolen. A.R.S. § 13-1814(C) precludes a prosecution for theft of means
16 of transportation from going forward without an affidavit that the car was stolen. The state
17 agency that prosecuted Petitioner—the Yavapai County Attorney—responded to
18 Petitioner’s records request that it had no such affidavit. This does not matter. Petitioner
19 was not prosecuted for theft of means. And the affidavit is not required for an officer to
20 make *an arrest* in any event.

21 Finally, the Court will grant the Motions to Strike, and will strike Petitioner’s
22 Judicial Notices (Docs. 35, 47). The subject of both notices is improper and they are mooted
23 by the Court’s other rulings.

24 **IT IS ORDERED** overruling Petitioner’s Objections (Doc. 43) and adopting in
25 whole the Report and Recommendation by Magistrate Judge Willett (Doc. 33).

26 **IT IS FURTHER ORDERED** dismissing with prejudice Grounds 4, 5 and 7 of the
27 Amended Petition Under 28 U.S.C. § 2254 for a for Writ of Habeas Corpus (Doc. 14), and
28 denying Grounds 1, 2, 3 and 6.

Dated this 30th day of September, 2024.

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